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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENTDocket Number (Optional)
CCS 0202USCNTIn re Application of: **NAEFF, et al.**Application No.: **10/659,097**Filed: **September 10, 2003**For: **ERYTHROPOIETIN LIPOSOMAL DISPERSION**

The owner*, **CILAG GMBH INTERNATIONAL I4680**, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of prior patent No. **6,645,522** as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 47,019

07/07/2008 CKHLOK 00000006 100750 11161799
Sale Ref: 00000014 DA# 100750 11161799
01 FC:1814 130.00 DA
/Yunling Ren/ October 2, 2007

Signature

Date

YUNLING REN

Type or printed name

(732) 524-3385

Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included. [NOTIFICATION AND AUTHORIZATION FOR PAYMENT OF FEES ASSOCIATED WITH THIS FILING IS PROVIDED ON THE AMENDMENT/RESPONSE FILED CONCURRENTLY HEREWITH.]

WARNING. Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically transmitted on the date shown below:

Dated: **October 2, 2007** Signature: **/Yunling Ren/** (YUNLING REN)

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

I hereby certify that this correspondence is being transmitted via The Office electronic filing system (EFS) in accordance with 37 CFR 1.6(a)(4).

Date of Electronic (EFS) Transmission: October 2, 2007

Signature: /Yunling Ren/ Name: YUNLING REN

Docket No.: **CCS 0202USCNT**
EFS Filing: October 2, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant(s): NAEFF, et al.

Confirmation No.: 4324

Application No.: 10/659,097

Group Art: 1615

Filing Date: September 10, 2003

Examiner: B. P. Barham

Title: ERYTHROPOIETIN LIPOSOMAL DISPERSION

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

Note: A grantable petition requires the following items:

1. Petition fee;
2. Reply and/or issue fee;
3. Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
4. Statement that the entire delay was unintentional.

1. Petition fee

Small entity fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity fee \$1,500 (37 CFR 1.17(m)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office Action in the form of an AMENDMENT (identify type of reply):

has been filed previously on _____

is enclosed herewith.

B. The issue fee of \$ _____

has been paid previously on _____

is enclosed herewith.

3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for small entity or \$ _____ for other than a small entity disclaiming the required period of time is enclosed herewith (See PTO/SB/63).

A Terminal Disclaimer To Obviate A Double Patenting Rejection Over A "Prior" Patent is enclosed.

STATEMENT: The entire delay in filing the required reply, from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b), was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

Fee payment:

- Charge the petition fee of \$1,500.00 to Account 10-0750/CCS0202USCNT/YR and for any additional fee required.
- A check in the sum of \$_____ is attached.
- Charge Account 10-0750/ CCS0202USCNT/YR for any additional fee required.

Respectfully submitted:

/Yunling Ren/
YUNLING REN
Reg. No.: 47,019
Attorney for Applicant(s)

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Tel. No.: (732) 524-3385
Date: October 2, 2007
EPM

Enclosures: Fee Payment

- Reply
- Terminal Disclaimer Form
- Additional Sheets containing statements establishing unintentional delay
- Other: _____